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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,751	01/23/2002	Gustav P. Kuelbs	0638MH-40822CIP	9125
7590	01/24/2005		EXAMINER	
Melvin A. Hunn HILL & HUNN, LLP. Suite 1440 201 Main Street Fort Worth, TX 76102-3105			FADOK, MARK A	
			ART UNIT	PAPER NUMBER
			3625	
			DATE MAILED: 01/24/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/055,751 Examiner Mark Fadok	Applicant(s) KUELBS ET AL.	
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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 November 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-111 is/are pending in the application.
- 4a) Of the above claim(s) 2-91 and 97-111 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 92-96 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 May 2002 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Response to Election

The examiner is in receipt of applicant's response to office action mailed 10/18/2004, which was received 11/8/2004. Acknowledgement is made to the election of Group I claims 92-96 and the withdrawal of claims 2-91 and 97-111 along with the cancellation of claim 1 without traverse.

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 92-96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pallakoff (US 6,269,343) in view of Tuttrup et al (US 2002/0038266) and further in view of Official Notice.

In regards to claim 92, Pallakoff discloses a method of selling articles over a distributed data processing system, comprising:

- (a) identifying a product utilizing said distributed data processing system (FIG 2),
- (b) soliciting purchase commitments from potential purchasers over said distributed data processing system (Fig 3);
- (c) accepting contingent offers which depend upon obtaining a predetermined minimum number of offers before acceptance of said offers (Fig 3); and

Pallakoff teaches displaying information to notify aggregated buyers whether or not a sufficient number of items have been sold to meet required shipping levels and alternate threshold demands (FIG 3), but does not specifically mention that the criteria is the shipping space of a container (consolidation). Tuttrup teaches consolidating orders of items bought over the Internet for shipment to a customer to save shipping costs (Summary). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Pallakoff consolidating shipments because this would centralize the shipping process to allow vendors to gain the benefit of consolidated

shipping and to provide significant cost and convenience advantages to consumers (Tuttrup, page 1, para 0012).

The combination of Pallakoff and Tuttrup teach shipping requirements and consolidated shipments, but fail to teach that an indicator such as a visual representation of the level of fulfillment of a shipping container is utilized. It was old and well known in the art at the time of the invention to use visual indicators to show current status. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in the combination of Pallikoff/Tuttrup an indicator such as a visual representation of the level of fulfillment of a shipping container, because this method of representation is notoriously well known for communicating information visually which is known to be easier for the user to comprehend quickly and efficiently.

In regards to claim 93, the combination of Pallakoff and Tuttrup teach

(e) wherein said distributed data processing system includes a user interface which facilitates (1) gathering of information from potential purchasers and (2) presenting dynamically changing information to said potential purchasers (Fig 3).

In regards to claim 94, the combination of Pallakoff and Tuttrup teach (f) utilizing said distributed data processing system to identify a plurality of articles of manufacture which are different from one another and which are available for purchase by said plurality of potential purchasers (Fig 4).

In regards to claim 95, the combination of Pallakoff and Tuttrup teach (g) wherein said plurality of articles of manufacture are, or will be, located sufficiently physically proximate to one another prior to shipment to justify a consolidation and coordination of loading-for-shipping operations (Tuttrup, page 4, para 0052).

In regards to claim 96, the combination of Pallakoff and Tuttrup teach (h) wherein each of said plurality of articles of manufacture has particular shipping constraints associated therewith, including at least one of the following particular shipping constraints:

- (1) shipping origin;
- (2) shipping destination;
- (3) production completion date;
- (4) product volume and weight; and
- (5) product packaging (Tuttrup page 4, para 0052).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(703) 605-4252**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(703) 308-1344**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(703) 872-9306 [Official communications; including
After Final communications labeled
"Box AF"]

(703) 746-7206 [Informal/Draft communications, labeled
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.



Mark Fadok

Patent Examiner